

The operation of gaming devices by a nonprofit club for the pleasure of its members and guests does not affect the club's exempt status, even though the operation of gaming devices is illegal under local law.

The Internal Revenue Service has been asked whether the activity described below affects the status of a club otherwise exempt from Federal income tax under section 501(c)(7) of the Internal Revenue Code of 1954.

The club was formed as a nonprofit organization to operate and maintain social and recreational facilities open only to its members and their guests. In its club building, the organization maintains gaming devices for their pleasure and recreation. A part of the club's revenue is derived from these gaming devices. Operating gaming devices is illegal under local law.

Section 501(c)(7) of the Code provides that clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes are exempt from Federal income tax provided no part of the net earnings inures to the benefit of any private shareholder.

Section 1.501(c)(7)-1(a) of the Income Tax Regulations provides that, in general, the exemption extends to social and recreation clubs that are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Although gambling on the part of the participants may be accompanied by a desire for financial gain, it also supplies those elements of diversion that are commonly accepted as pleasure and recreation. Maintenance of gaming devices for members and guests of a club is an activity for their pleasure and recreation within the meaning of section 501(c)(7) of the Code. The Tax Court of the United States in *Aviation Country Club, Inc. v. Commissioner*, 21 T.C. 807 (1954), acquiescence, C.B. 1954-2, 3, held the club therein considered was exempt under the predecessor provision of section 501(c)(7) of the Code. In that case the club maintained and operated gaming devices that were illegal under local law.

The fact that a club derives a principal part of its revenue from its recreational facilities does not affect its exempt status, so long as the facilities are used only by the members and their guests. See Rev. Rul. 44, C.B. 1953-1, 109. Therefore, the receipt of revenue from the gaming devices does not affect the club's exempt status.

Furthermore, the fact of illegality of gaming devices under local law does not affect the club's exempt status. See Aviation Country Club, Inc. v. Commissioner cited above.

Accordingly, the operation of the gaming devices under the circumstances described does not affect the status of the club otherwise exempt from Federal income tax under section 501(c)(7) of the Code.